



Laws Governing Supplemental Hourly Instruction in Charter Schools

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Note: CSDC has assembled this compilation of laws governing the four supplemental hourly ("summer school") programs that charter schools may operate. Since there exists no official application, instruction forms or materials for these complex programs, CSDC offers this and other resources to aid charter schools that operate these programs. As shown below, various Education Code sections authorize and govern each of the four supplemental hourly programs, though they share some common elements. Other elements are unique to each program. The headings, notes, and footnotes below are not part of the actual laws, reflect CSDC's understanding of the laws, and do not constitute legal guidance. Two of four programs governed by these laws were slated to "sunset" at the end of the 2004-05 fiscal year, but were extended pursuant to Assembly Bill 1136, which extends these programs using the statutory language shown below.

Hourly Instruction for Students at Risk of Failing the High School Exit Exam

37252. (a) The governing board of each school district maintaining any or all of grades 7 to 12, inclusive, shall offer, and a charter school may¹ offer, supplemental instructional programs for pupils enrolled in grades 7 to 12, inclusive, who do not demonstrate sufficient progress toward passing the exit examination required for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33.

(b) Sufficient progress, as described in subdivision (a), shall be determined on the basis of either of the following: (1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the state board pursuant to Section 60648.²(2) The pupils' grades and other indicators of academic achievement designated by the district.³

(c) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade.⁴ Supplemental instruction may also be offered to a pupil who was enrolled in grade 12 during the prior school year.⁵

(d) For the purposes of this section, pupils who do not possess sufficient English language skills to be assessed, as set forth in Sections 60850 and 60853, shall be considered pupils who do not demonstrate sufficient progress towards passing the exit examination required for high school graduation and shall receive supplemental instruction designed to assist pupils to succeed on the high school exit examination.⁶

¹ Note that for charter schools, offering supplemental instruction for students at risk of failing the HSEE is optional whereas school districts must do so.

² This refers to the STAR (Standardized Testing and Reporting) system, including the state-mandated norm-referenced test (currently the CAT-6, previously the SAT-9), the California Standards Tests, and the SABE/2 (Spanish language norm-referenced test).

³ Note the seemingly broad degree of discretion granted. Presumably charter schools may designate their own indicators of academic achievement, provided they have some reasonable basis relative to passage of the High School Exit Exam.

⁴ Thus, students who have completed the 6th grade may participate in this program.

⁵ Thus, students who were enrolled in the 12th grade and failed the exam may engage in supplemental hourly instruction for an extra school year.

⁶ Note that this section seems to provide more broad latitude to provide supplemental instruction to pupils who lack sufficient command of the English language to be assessed.

(e) Except as provided in subdivision (h), programs may be offered pursuant to this section during the summer, before school, after school, on Saturday, or during intersession, or in any combination of summer, before school, after school, Saturday, or intersession instruction, but shall be in addition to the regular schoolday. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday over a pupil who is not unable to attend a Saturday school program for religious reasons.

(f) A school district or charter school offering supplemental instructional programs pursuant to this section shall receive funding as described in Section 42239 and in the annual Budget Act.

(g) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

(h) Funds received for supplemental instruction pursuant to this section may also be used to provide intensive instruction and services to eligible pupils pursuant to Section 37254.

Hourly Instruction for Students in Grades 2-9 Retained or Recommended for Retention

37252.2. (a) The governing board of each school district maintaining any or all of grades 2 to 9, inclusive, shall offer, and a charter school may offer⁷, programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been recommended for retention or who have been retained pursuant to Section 48070.5.⁸ A school district or charter school may require a pupil who has been retained to participate in supplemental instructional programs. Notwithstanding the requirements of this section, the school district or charter school shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the program. Attendance in supplemental instructional programs shall not be compulsory within the meaning of Section 48200.⁹

(b) Supplemental educational services pursuant to subdivision (a) may be offered during the summer, before school, after school, on Saturdays, or during intersession, or in a combination of summer school, before school, after school, Saturday, or intersession instruction. Services shall not be provided during the pupil's regular instructional day. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday, over a pupil who is not unable to attend a Saturday school program for religious reasons.

(c) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Summer school instruction may also be offered to pupils who were enrolled in grade 6 during the prior school year. For ninth grade pupils identified in subdivision (a), summer school instruction may also be offered to pupils who were enrolled in grade 9 during the prior school year.

(d) Each school district or charter school shall use results from tests administered under the Standardized Testing and Reporting Program, established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 or other evaluative criteria to identify eligible pupils pursuant to subdivision (b).

(e) An intensive remedial program in reading or written expression offered pursuant to this section shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word

⁷ This program is optional for charter schools, mandatory for school districts.

⁸ Note: The laws governing retention of students are listed below. In order to offer this form of supplemental instruction, a charter school presumably must develop retention policies as specified in Section 48070.5.

⁹ These sections are rather poorly-drafted and seem to contradict one-another. They seem to mean that schools may have a general requirement that retained students participate in supplemental instruction provided that parents may opt out.

attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills.¹⁰

(f) Each school district or charter school shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instructional programs provided pursuant to this section.¹¹

(g) It is the intent of the Legislature that pupils who are at risk of failing to meet state adopted standards, or who are at risk of retention, be identified as early in the school year and as early in their school careers as possible, and be provided the opportunity for supplemental instruction sufficient to assist them in attaining expected levels of academic achievement.¹²

(h) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

(i) This section shall become operative on January 1, 2003.

Hourly Instruction for Students in Grades 2-6 Academically "Deficient"/ at Risk for Retention

Note: This program is scheduled to "sunset" at the end of the 2004-05 school year. Pending legislation, AB 1136, would extend the program with the language specified below.

37252.8. (a) The governing board of a school district and a charter school maintaining any of grades 2 to 6, inclusive, may offer programs of direct, systematic, and intensive supplemental instruction to a pupil enrolled in grades 2 to 6, inclusive, who meets either of the following criteria:

(1) The pupil has been identified as having a deficiency in mathematics, reading, or written expression based on the results of a test administered under the Standardized Testing and Reporting Program established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(2) The pupil has been identified as being at risk of retention pursuant to Section 48070.5.

(b) Supplemental educational services offered pursuant to this section may be offered during the summer, before school, after school, on Saturdays, or during intersession, or in a combination of summer school, before school, after school, Saturday, or intersession instruction. Services shall not be provided during the regular instructional day of the pupil. A minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or a pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday, over a pupil who is not unable to attend a Saturday school program for religious reasons.

(c) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Summer school instruction may also be offered to a pupil who was enrolled in grade 6 during the prior school year.

(d) An intensive remedial program in reading or written expression offered pursuant to this section shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills.

(e) A school district or charter school shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instructional programs provided pursuant to this section.

(f) It is the intent of the Legislature that a pupil who is at risk of failing to meet state-adopted standards, or who is at risk of retention, be identified as early in the school year, and as early in his or her school careers as possible and be provided the opportunity for supplemental instruction sufficient to assist him or her in attaining expected levels of academic achievement.

(g) (1) A school district or charter school that offers instruction pursuant to this section shall be entitled to receive reimbursement in an amount up to 5 percent of the total enrollment of the school district or charter

¹⁰ Note that reading and writing instruction is supposed to include phonics-based instruction on an "as needed" basis. Presumably, schools enjoy reasonable flexibility to determine whether such instruction is needed.

¹¹ Be sure to work parent and classroom teacher involvement into the process.

¹² The state seems to be encouraging schools to intervene and provide supplemental instruction as early as possible and not routinely wait until the summer or later.

school in grades 2 to 6, inclusive, for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (b) of Section 42239.

(2) The balance of the appropriation made for the purposes of funding programs offered pursuant to this section to serve pupils in grades 2 to 6, inclusive, shall be allocated for reimbursement of pupil attendance in instruction pursuant to subdivision (a) that is in excess of 5 percent, but not in excess of 7 percent, of the enrollment of the school district or charter school for the prior year in grades 2 to 6, inclusive, multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (b) of Section 42239.

(h) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent may waive any provision of this section.

Supplemental Hourly Instruction for "Core" Subjects in Grades K-12

Note: This program is also scheduled to "sunset" at the end of the 2004-05 school year. Pending legislation, AB 1136, would extend the program with the language specified below.

37253. (a) The governing board of any school district and a charter school may offer supplemental instructional programs in mathematics, science, or other core academic areas designated by the Superintendent of Public Instruction.

(b) The Superintendent of Public Instruction shall adopt rules and regulations necessary to implement this section, including, but not limited to, the designation of academic areas other than mathematics and science as core academic areas.

(c) (1) The maximum entitlement of a school district or charter school for reimbursement for pupil hours of attendance in supplemental instructional programs offered pursuant to this section shall be an amount equal to 5 percent of the total enrollment of the school district or charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to paragraph (2). (2) Pupil hours of attendance in supplemental instructional programs offered pursuant to this section shall be reimbursed at a rate of three dollars and fifty-three cents (\$3.53) per pupil hour, adjusted in the 2005-06 fiscal year and subsequent fiscal years as specified in this paragraph, provided that a different reimbursement rate may be specified for each fiscal year in the annual Budget Act that appropriates funding for that fiscal year. This amount shall be increased annually by the percentage increase pursuant to subdivision (b) of Section 42238.1 granted to school districts or charter schools for base revenue limit cost-of-living increases.

(d) To the extent appropriated funding allows, a school district or charter school may enroll more than 5 percent of its pupils, or may enroll pupils for more than 120 hours per year, in supplemental instructional programs offered pursuant to this section, if the total state apportionment to the district or charter school for these programs does not exceed an amount computed equal to 10 percent of the total enrollment of the school district or charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year, as determined pursuant to paragraph (2) of subdivision (c).

(e) Instructional programs may be offered pursuant to this section during the summer, before school, after school, on Saturday, or during intersession, or in any combination of summer, before school, after school, Saturday, or intersession instruction, but shall be in addition to the regular schoolday. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday, over a pupil who is able to attend a Saturday school program.

(f) Notwithstanding any other law, neither the State Board of Education nor the Superintendent of Public Instruction may waive compliance with any provision of this section.

CAHSEE Intensive Instruction and Services

Note: This program is funded from a fixed pool of funds that are rationed to high schools with high proportions of students who have failed the high school exit exam.

37254. (a) For purposes of this section, "eligible pupil" means a pupil who is required to pass the California High School Exit Examination required for high school graduation pursuant to Chapter 8

(commencing with Section 60850) of Part 33, and who has failed one or both parts of that examination. For the 2005-06 fiscal year, an eligible pupil does not include a pupil who receives services related to the passage of the examination pursuant to Provision 24 of Item 6110-161-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005.

(b) The Superintendent shall rank schools on the basis of the percentage of eligible pupils. The Superintendent may give priority to schools with the highest percentage of eligible pupils who have failed both parts of the examination.

(c) From the funds appropriated for purposes of this section, the Superintendent shall apportion six hundred dollars (\$600) per eligible pupil to school districts on behalf of schools identified pursuant to subdivision (b) in the order determined by the Superintendent until the funds are exhausted. The amount per eligible pupil shall be increased annually by the percentage determined in paragraph (2) of subdivision (b) of Section 42238.1.

(d) (1) The funds apportioned pursuant to subdivision (c) shall be used to provide intensive instruction and services designed to help eligible pupils pass the California High School Exit Examination. (2) Intensive instruction and services may be provided during the regular schoolday provided that they do not supplant the instruction of the pupil in the core curriculum areas as defined in paragraph (5) of subdivision (a) of Section 60603, or physical education instruction. (3) Intensive instruction and services may include, but are not limited to, all of the following:

(A) Individual or small group instruction.

(B) The hiring of additional teachers.

(C) Purchasing, scoring, and reviewing diagnostic assessments.

(D) Counseling.

(E) Designing instruction to meet specific needs of eligible pupils.

(F) Appropriate teacher training to meet the needs of eligible pupils.

(e) As a condition of receiving funds pursuant to subdivision (c), the school district shall accomplish all of the following:

(1) Ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need.

(2) Ensure that each pupil receives intensive instruction and services based on the results of the diagnostic assessment.

(3) Demonstrate that funds will be used to supplement and not supplant existing services.

(4) Provide to the Superintendent of Public Instruction, in a manner and by a date certain determined by the Superintendent, the number of eligible pupils at each high school in the school district.

(5) Submit an annual report to the Superintendent in a manner determined by the Superintendent that describes the number of pupils served, the types of services provided, and the percentage of pupils in the school district who successfully pass the California High School Exit Examination.

Laws Limiting "Social Promotion" of Academically "Deficient" Students

[Though these laws limiting "social promotion" do not generally govern charter schools, charter schools operating supplemental hourly programs for students who are retained, recommended for retention, or at risk for retention presumably must use them to develop policies to identify such students as eligible for receiving supplemental instruction.]

48070. The governing board of each school district and each county superintendent of schools shall adopt policies regarding pupil promotion and retention. A pupil shall be promoted or retained only as provided in the policies adopted pursuant to this article.

48070.5. (a) In addition to the policy adopted pursuant to Section 48070, the governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils between the following grades:

(1) Between second grade and third grade.

(2) Between third grade and fourth grade.

(3) Between fourth and fifth grade.

(4) Between the end of the intermediate grades and the beginning of middle school grades which typically occurs between sixth grade and seventh grade, but may vary depending upon the grade configuration of the school or school district.

(5) Between the end of the middle school grades and the beginning of high school which typically occurs between eighth grade and ninth grade, but may vary depending upon the grade configuration of the school or school district.

(b) The policy shall provide for the identification of pupils who should be retained and who are at risk of being retained in their current grade level on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupil's grades and other indicators of academic achievement designated by the district.

(c) The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraph (1) and (2) of subdivision (a) primarily on the basis of the pupil's level of proficiency in reading. The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraphs (3) through (5) of subdivision (a) on the basis of the pupil's level of proficiency in reading, English language arts, and mathematics.

(d) (1) If either measure identified in paragraph (1) or (2) of subdivision (b) identifies that a pupil is performing below the minimum standard for promotion, the pupil shall be retained in his or her current grade level unless the pupil's regular classroom teacher determines in writing that retention is not the appropriate intervention for the pupil's academic deficiencies. This written determination shall specify the reasons that retention is not appropriate for the pupil and shall include recommendations for interventions other than retention that in the opinion of the teacher are necessary to assist the pupil to attain acceptable levels of academic achievement. If the teacher's recommendation to promote is contingent upon the pupil's participation in a summer school or interim session remediation program, the pupil's academic performance shall be reassessed at the end of the remediation program, and the decision to retain or promote the pupil shall be reevaluated at that time. The teacher's evaluation shall be provided to and discussed with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion.

(2) If the pupil does not have a single regular classroom teacher, the policy adopted by the school district shall specify the teacher or teachers responsible for the promotion or retention decision.

(e) The policy shall provide for parental notification when a pupil is identified as being at risk of retention. This notice shall be provided as early in the school year as practicable. The policy shall provide a pupil's parent or guardian the opportunity to consult with the teacher or teachers responsible for the decision to promote or retain the pupil.

(f) The policy shall provide a process whereby the decision of the teacher to retain or promote a pupil may be appealed. If an appeal is made, the burden shall be on the appealing party to show why the decision of the teacher should be overruled.

(g) The policy shall provide that pupils who are at-risk of being retained in their current grade be identified as early in the school year, and as early in their school careers, as practicable.

(h) The policy shall indicate the manner in which opportunities for remedial instruction will be provided to pupils who are recommended for retention or who are identified as being at risk for retention.

(i) The policy adopted pursuant to this section shall be adopted at a public meeting of the governing board of the school district.

(j) Nothing in this section shall be construed to prohibit the retention of a pupil not included in grade levels identified pursuant to subdivision (a), or for reasons other than those specified in subdivision (b), if such retention is determined to be appropriate for that pupil. Nothing in this section shall be construed to prohibit a governing board from adopting promotion and retention policies that exceed the criteria established in this section.